The Solicitors' Journal

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Current Topics.

New Procedure Cases.

It is too early yet to appraise the full results of the New Procedure, but it is possible at this stage to indicate some definite consequences. In the first trial under the new rules on 22nd June the plaintiff obtained judgment on his affidavit without going into the witness-box, the defendant not appearing to defend. The writ was issued under the ordinary procedure on 20th May and the case was transferred to the New Procedure List by the master under Ord. XIV, r. 6. The two distinct advantages secured by this course was that there was a judge in London to hear the case as soon as it was set down, and that the plaintiff's affidavit under Ord. XIV was accepted as sufficient evidence upon which to obtain judgment. Had the master transferred the case to the "Short Cause List," as was the practice at one time, a further delay of several weeks might have occurred before the case appeared in the day's cause list, owing to the absence of judges on circuit. One of the further satisfactory results of the New Procedure has been that where a writ has been marked "New Procedure," there has been a greater willingness on the part of defendants to settle cases than if the speculative element of jury trial were added. There are speculative defendants as well as speculative plaintiffs, and the uncertainty of a jury's verdict adds an element which assists both, and does not assist the course of justice. There is no foundation for the implication raised in a motion by Mr. Macquisten in the House of Commons on 13th June that the subject is in danger of losing all his rights to civil trial by jury and that the new rules should therefore be annulled. In all matters affecting his reputation or his liberty, the subject has not lost one iota of that right, as the New Procedure expressly excludes actions for libel, slander, malicious prosecution, false imprisonment, seduction and breach of promise of marriage. If it is true, as an official in the Law Courts is reported by an evening paper to have stated, that "litigants taking advantage of the New Procedure were so unexpectedly large in number that it was possible that the office staff would have to be increased to deal with the rush," that fact evinces the general accord existing in the profession as to its benefits.

The Doctrine of Identification.

Since the case of the *Bernina*, 13 A.C. 1, the doctrine of identification by which a passenger is so identified with the conveyance in which he is carried that want of care of the driver will be a defence to a claim by the passenger against the driver of the carriage directly causing the injuries, has found little favour in the English courts. It was recently raised in *Oliver and Another* v. *the Birmingham and Midland Motor Omnibus Co. Ltd.* in the Divisional Court (*The Times*, 11th June), as an answer to a claim by a child suing by his father as next friend for damages for personal injuries resulting from the negligent driving of an omnibus belonging to the defendants. The plaintiff had been awarded £200 damages by a jury in the county court, and judgment had been entered accordingly (see "County Court Letter," 76 Sol. J. 228.) The facts were that the infant plaintiff, who was four years old, was walking hand-in-hand with his grandfather across a road. The grandfather, on becoming aware of the approach of the defendants' omnibus, suddenly let go the plaintiff's hand and jumped to a place of safety, but the plaintiff was knocked down and seriously injured. The jury found that the defendants' driver had been guilty of negligence, and that the plaintiff's grandfather had been guilty of contributory negligence. Mr. Justice Swift, in dismissing the appeal, said that *Waite* v. *North Eastern Railway Company* (1859), E. B. & E. 728, in which an infant plaintiff under the care of his grandmother was held disentitled to succeed, on the ground of identification with the contributory negligence of his grandmother, was impliedly overruled by the *Bernina Case*, *supra*. Mr. Justice Macnaghten concurred in this judgment. The latter case expressly overruled *Thorogood* v. *Bryan* (1849), 8 C.B. 115, which, at the date of *Waite's Case*, was still regarded as the law of the country. Actually, Lord Bramwell, in the *Bernina* (at p. 16) stated that if the proposed judgment was right then *Waite's Case* was wrongly decided. Both Lord Herschell and Lord Watson, however, distinguished *Waite's Case*, and did not, impliedly or expressly, overrule it. The result of the case is to end the doubt that has always existed concerning the legal rights of an infant who has been injured by the joint negligence of the person under whose care he is and a third party, and completely to dispose of the mischievous doctrine of identification. It seems that the sins of grandfathers and grandmothers cannot be "visited upon the children" in this way.

An Unusual Petition in Divorce.

Bell v. *Bell and Cooke* (*The Times*, 10th June, 1932), was a petition, not for divorce, but for damages only. Such petitions lie under s. 189 (1) of the Judicature Act, 1928, to that extent re-enacting a provision in s. 33 of the original Matrimonial Causes Act, 1857. Both Acts provide that claims for damages on the ground of adultery shall be governed by the principles and practice of the old common law action of "crim. con," which the Act of 1857 abolished. A husband necessarily brought this action for damages on the ground of the defendant's adultery with his wife without asking the court for divorce, because the court had no power to grant it. Success in such an action was, in fact, a necessary preliminary to a Bill in Parliament for divorce. When the court was given power to pronounce divorce, it was given this power also to award damages without divorce, but a petition for damages only when a husband is in a position to divorce his wife is exceedingly rare, and the petitioner is not regarded in the normal

case with exaggerated respect. In *Ramsden* v. *Ramsden and Luck* (1886), 2 T.L.R. 867, HANNEN, P., said that, although he had presided over that court for some twelve or fourteen years, he had never before entertained such a petition. The petitioner having himself committed adultery, the damages were returned at a farthing, and in *Cox* v. *Cox and Warde* [1936] P. 267, BARNES, P., dismissed such a petition in similar circumstances. The present case was of an entirely different nature. The petitioner and respondent were domiciled in Scotland, where the petitioner sought and obtained divorce on the ground of the respondent's adultery with the co-respondent, a domiciled Englishman, in England. The petitioner's plea for damages in the Scottish Court against the latter failed for want of jurisdiction. He, therefore, claimed and was awarded damages in the English Court without seeking divorce, for the entirely adequate reason that he had already obtained it. A petitioner avowedly domiciled elsewhere than in England must be a great rarity in the Divorce Court, but the case shows that he may find a successful prayer. Some technical point might appear to lie on the phrasing of the Act "A husband . . . may claim damages." The petitioner was in fact no longer a husband when the case was heard, and his late wife had married the co-respondent. However, there was authority that a widower might succeed in an action for "crim. con": see *Wilton* v. *Webster* (1835) J. C. & P. 198, and this was followed under the 1857 Act in *Kent* v. *Atkinson* [1923] P. 142. Thus the principle would apply to a petitioner who, for a reason other than the death of his wife, had ceased to be her husband.

The Vindication of Bumble.

BUMBLE'S FAMOUS *dictum* was recently the subject of an allusion in the Court of Appeal, when Serjeant SULLIVAN, in dealing with a hypothesis put forward from the bench, said that if it were sound BUMBLE would be completely vindicated. With all due deference, we venture to suggest that this and similar allusions do not do justice to Mr. BUMBLE'S sense of caution. For an examination of the context shows that his oft-quoted opinion was itself merely a hypothetical one. "*If* the law supposes that [i.e., that a wife who commits a crime in her husband's presence acts under his direction] the law is a ass." And indeed, the proposition was never very firmly established; and the language used by the Criminal Justice Act, 1925, s. 47: "*Any* presumption of law that an offence committed by a wife in the presence of her husband is committed under the coercion of the husband is hereby abolished," constitutes the real vindication of BUMBLE.

Speed of Motor Traffic.

ADVOCATES IN "running down" cases are always thankful for authoritative guidance from the higher tribunals on the vexed question of what constitutes negligent driving. Such guidance was forthcoming from Lord Justice SCRUTTON in allowing an appeal from the Divisional Court on 21st June in *Baker* v. *E. Longhurst & Sons, Ltd.* (*The Times*, 22nd June). The exact words used by his lordship were: "People must go at such a speed that they can pull up within their range of vision," and the rule so authoritatively stated is one which has often been recognised by judges but never until now embodied in reported decisions. The facts were that the plaintiff was riding a properly lighted motor-cycle just after lighting-up time, when he came into collision with the defendants' horse and cart, which was unlighted. The county court judge held that the defendants were guilty of negligence and that they had not satisfied him that the plaintiff was guilty of contributory negligence, and therefore entered judgment for the plaintiff. The two judges of the Divisional Court differed and the appeal was accordingly dismissed. Lord Justice SCRUTTON stated that the plaintiff was, on his own evidence, guilty of negligence, on the principle of *Sharpe* v. *Southern Railway* [1925], 2 K.B. 311, as he declared that he could pull up his motor-cycle in ten yards and his lamp enabled him to see a vehicle thirty yards off. Either he was going so fast that he could not pull up within the range of vision or he was not looking to see what was in front of him. It is useful to have a clear judicial pronouncement on this point, in addition to the existing instruction in the Highway Code with regard to speed—always to have the vehicle under full control and to be "ready and able to pull up well within the distance which you can see to be clear." This principle has been established in the Canadian courts: see *Vancouver Ice and Storage Co.* v. *British Columbia Electric Railway Company* (1927), 1 W.W.R. 631; *Macgill* v. *Holmes* (1927), 39 B.C.R. 65; and *Keatley* v. *Spearing* (1931), 2 W.W.R. 309. The importance of the present decision is that while under s. 45 of the Road Traffic Act, 1930, a breach of the Highway Code may be evidence of negligence in a civil or criminal proceeding, this particular breach of the Code is now clearly negligence.

Dogs and Motor Cars again.

IT HAS been held that the owner of a domestic animal is not generally liable for the damage it commits through following its natural propensities: *Buckle* v. *Holmes* [1926] 2 K.B. 125, and only for that resulting from its savage propensities if its owner knew of the existence of such propensities. In *Sycamore* v. *Ley* (*The Times*, 22nd June) which came before the Court of Appeal from a decision of Mr. Justice DU PARCQ on which we have previously commented, see *ante*, p. 334, the court had to consider the question of whether a car owner who parked his car with his dog tied up inside was liable to a child for injuries she received from being bitten when she leaned over the car to look at the dog. The dog, it was admitted, was not known to be of a dangerous disposition. It will be remembered that on failure by the jury to agree, Mr. Justice DU PARCQ refused to enter judgment for the defendant on the ground that the dog in the car might, in the jury's view, constitute a trap or allurement to children: *Latham* v. *R. Johnson & Nephew Ltd.* [1913] 1 K.B. 398, and held that the case must remain one in which the jury had been unable to agree. In allowing the appeal and entering judgment for the defendant with costs, Lord Justice SCRUTTON said that under the circumstances of the case the dog was all the more safe for being tied up in the car, and the defendant had actually warned children to keep away from it. Lord Justice GREER thought that a dog owner was entitled to leave his dog in his motor-car for the reasonable protection of the car when he had to be absent for the needs of his business, provided that he took reasonable steps to protect those entitled to use the public highway. The general question whether owners might leave a dog known to be dangerous in a motor-car in order to protect it did not arise, and was expressly left untouched by this decision, although the court was told that both the Automobile Association and the police wanted the case fought to raise that question. But it seems quite clear now that taken together with the recent House of Lords decision in *Fardon* v. *Harcourt Rivington*, 48 T.L.R. 215, the ordinary and everyday circumstance of leaving a dog not known to be savage in a motor-car does not increase the legal liabilities of animal owners.

The Law Society's Report.

THE annual report of the Council of The Law Society for the year 1931, a résumé of which appears in the "Societies" column of this issue, is a valuable record of the good work done by The Law Society and the provincial law societies during the past year. Solicitors who are members of The Law Society or of the provincial societies cannot fail to appreciate the splendid services rendered by these bodies on behalf of the profession, and a perusal of the report by those who have as yet abstained from joining should prove a strong encouragement to them to join forthwith, and so further assist by co-operation in the task of protecting the good name and interests of the profession.

The Widening of Roads

UNDER ss. 30 AND 31 OF THE PUBLIC HEALTH ACT, 1925.

SEVERAL difficult points of law arise in connexion with road widenings under these two sections, points with which solicitors acting for property owners and builders should be fully conversant. Section 30 enables a local authority, where it appears to them that the whole or a portion of an existing highway will be converted into a new street as the result of building operations which have been, or are likely to be, undertaken in the vicinity, to declare, by order, the whole, or such portion, of the highway to be a new street for the purpose of the application thereto of their bye-laws with respect to new streets. Upon such an order coming into operation, any person who commences to erect a new building on land abutting on or adjoining the highway, or such portion of the highway, shall be deemed to be laying out a new street within the meaning of the bye-laws of the local authority with respect to new streets, or of any provision in a local Act with respect to the width of new streets.

Section 31 provides that whenever application is made to the local authority to approve the plans of a new street, in pursuance of any bye-law or enactment requiring a plan to be submitted to the local authority, and such new street in the opinion of the local authority will form—

(*a*) a main thoroughfare or a continuation of a main thoroughfare, or means of communication between main thoroughfares in their district; or

(*b*) a continuation of a main approach, or means of communication between main approaches, to their district,

the local authority may, as a condition of their approval, require that the new street shall be formed of such width as they may determine; if such width exceeds by more than twenty feet the maximum width prescribed for a new street by any bye-law or enactment with respect to the width of new streets which may be in force in the area, the local authority shall make compensation for any loss or damage which may be sustained by reason of the street being required to be a width greater than twenty feet in excess of such maximum width. In assessing this compensation the local authority are entitled to have the benefit set off.

It is not intended to discuss here either the reasons which led Parliament to enact these provisions, or the merits of the provisions, but rather to direct attention to their effect and to the legal points with which solicitors whose clients may be affected by them should be acquainted.

The first point to consider is the conditions which must be observed before the local authority can make an order. These are three:—(1) It must appear to the local authority that the whole or portion of the existing highway will be converted into a new street; (2) notice of the intended order must be posted at each end of the street, or part of the street, or in some conspicuous position in the street or part affected, not less than one month before making the order; (3) the notice must state that the intended order may be made on or at any time after the day named in the notice and that an appeal will lie to quarter sessions against the order at the instance of the person aggrieved.

As to (1): the question arises whether s. 30 can be put into force with respect to a highway which is already of bye-law width for the sole purpose of bringing into operation the provisions of s. 31 which enable the local authority to secure an extra twenty feet of land without compensation. The words of s. 30 are "declare such highway . . . to be a new street for the purpose of the application thereto of their bye-laws with respect to new streets." Under s. 31 the requirement of the extra width may be made as a condition of their approval of plans submitted to them. It is submitted that this condition is one super-imposed on the ordinary bye-laws and would not fall within the scope of the expression "the application thereto of their bye-laws with respect to new streets." It is clear, however, that in the majority of cases it will be difficult to establish that the order under s. 30 is improperly made and that the real reason for its having been made is to bring s. 31 into operation.

The next point of importance is as to what bye-laws can be applied when such an order under s. 30 is made: that is to say, can the order apply to the highway all the bye-laws of the local authority (usually made under s. 157 of the Public Health Act, 1875) as to the level, construction, sewerage, etc., of new streets, or only such of the bye-laws as relate to the width of new streets. It is clear that only the provisions relating to the width of new streets in a local Act are applied by the Order, but there is nothing in the wording of the section, apart from this, to support the contention that only the bye-laws relating to the width of new streets are applicable. It may be noticed, in passing, that s. 29, which was also passed to overcome certain difficulties which had arisen in the application of bye-laws, etc., to streets which are to form a continuation of an existing street, provides that: "A street may be deemed to be a new street for the purpose of the application of *any* bye-laws of the local authority with respect to new streets, or of any provision in a local Act with respect to the *width* of new streets, etc."

The third point which it is necessary to consider is, who are the local authorities who can put these sections into force? There is some difficulty in answering this question, but the position appears to be as follows: Urban district councils may adopt and operate these sections in respect of any highways which they repair and maintain as highway authority. County councils may operate the sections without adopting them in respect of rural roads transferred to them from the jurisdiction of rural district councils by the Local Government Act, 1929, as if the references to "their bye-laws" and "the bye-laws of the local authority" were references to the bye-laws of the rural district council": see L.G.A., 1929, s. 30 (2). Rural district councils cannot operate the sections at all, save as agents for the county council in respect of the latter roads. County councils cannot operate the sections in respect of any roads which were formerly termed "main roads," because they have no bye-laws relating to new streets, and there is no express provision such as contained in s. 30 (2) of the 1929 Act, *supra*; neither can they operate the sections in respect of any roads known as "classified roads" transferred to them from the jurisdiction of urban district councils by the Local Government Act, 1929. Finally, urban district councils cannot operate the sections in respect of any roads now called "county roads," which, although within the district of the urban district council, are repaired and maintained by the county council. These submissions are based on the assumption that the expression "local authority" in s. 30 means the local authority for the particular highway. The alternative interpretation is, of course, that, for the purposes of s. 30, a highway or portion of a highway is within the district of a particular "local authority," though that authority may not be responsible for the highway or portion thereof. But can a highway be within the "district" of a local authority that has no jurisdiction over it? And if a highway can be in a "district" in this sense, many highways must be in the "district" of both an urban district council and a county council. In this case, which is the local authority?

There are, of course, other points of major or minor importance arising on these sections, such as the meaning of the expressions "abutting" and "new streets." But these are not new points arising on the 1925 Act. And it is in connexion with these new problems that most disputes are likely to arise. Each of these questions is difficult to answer definitely, but it is hoped that some arguments of weight have in this short discussion been brought to the notice of those who are likely to have to act for clients in connexion with these matters.

Costs in Prosecutions.

[Contributed.]

There appeared an unusual, and indeed somewhat regrettable, case recently, where a father was accused at the Old Bailey of having murdered his son by shooting. Notwithstanding the testimony on behalf of the prosecution, of a very eminent pathologist, the court early arrived at the conclusion that the charge was based entirely on supposititious grounds, and the jury are reported to have "stopped the case." The charge was dismissed, and the court ordered the costs of the defence to be paid by the prosecution.

In view of the existent controversy as to the value of the grand jury, it is interesting to observe that in the present case, where that body might have been expected to perform its principal function of protecting the subject from flimsy charges, the gravity of charge itself had apparently outweighed proper consideration of its intrinsic worth.

Well is it for our legal system that such cases are in fact unusual, for it is indeed a rare occurrence for a charge so serious as murder to be thus summarily dismissed. The most noticeable aspect of the case is that the judge found it proper to order the payment of costs by the prosecution. The layman may perceive no very special significance in this, but the initiated are well aware that such a decision throws a grave shadow on the judgment, if not the conduct, of those responsible for preferring such charges.

The public, of course, are better informed by the press of such extreme cases than of trials more illustrative of our normal methods of criminal procedure, and many practitioners must have encountered a tendency on the part of lay persons to assume it usual for the prosecution to pay costs when unsuccessful, on the analogy that in civil disputes the losing side usually pays costs. And it is surprising how many motorists and others charged with small summary offences confidently anticipate that in the event of their acquittal the costs will be paid by the prosecution.

The matter, so far as summary offences are concerned, is dealt with by the Summary Jurisdiction Act, 1848, s. 18 of which provides (*inter alia*) that where the justices dismiss an information or complaint "it shall be lawful . . . to award and order that the prosecutor or complainant respectively shall pay to the defendant such costs as to such justices shall seem just and reasonable . . ." And whether complainant or defendant is the party ordered to pay costs there is power under the same section (as amended by the Criminal Justice Act, 1914, ss. 16 and 25) to enforce payment by distress and sale or commitment.

The section, moreover, applies to the Crown proceeding in revenue matters (*Thomas* v. *Pritchard* [1903] 1 K.B. 209), although it is confidently supposed that the provisions for enforcing payment have not yet been invoked as against the revenue authorities or police!

A practitioner having successfully defended a client against a private prosecution will usually find it desirable to obtain some small redress for his client by securing an order for costs. The difficulties of succeeding in such an application in ordinary cases are by no means negligible, but the court may occasionally be swayed by a submission that the section (18) is far more apt in its application to private individuals, and that it is within the spirit of the Act to award costs against private prosecutors, who are not, in instituting proceedings, necessarily acting from disinterested motives of duty, as are the police and other authorities.

Again, if the unsuccessful complainant is one whose capacity or readiness to pay gives cause for anxiety, the lawyer may reflect with satisfaction how superior are the remedies which he can offer his client, to those available in the civil courts. For s. 18 enables the recovery of costs by distress and sale, and in default by imprisonment. It is true that the relevant part of s. 18 does not expressly state that these remedies apply to cases where an information is dismissed, and that s. 26 does provide that where an information or complaint is dismissed with costs "the sum which shall be awarded for costs in the order of dismissal may be levied by distress on the goods and chattels of the prosecutor or complainant in manner aforesaid." Observe that this section, although it adds "in manner aforesaid," apparently referring to s. 18, does not continue, as does that section, "and in default by imprisonment." It can hardly, therefore, be taken to apply the whole of the remedies conferred by s. 18 to cases of dismissal of an information or complaint, and it may be argued that, considering the two sections together, the former was intended to cover cases of a defendant, and the latter of a complainant, being ordered to pay costs, and that s. 26 was drawn with the specific object of providing a remedy in cases of dismissal. But it is submitted (and this is the view of the learned editors of "Stone") that s. 18 is sufficiently clear to cover both cases, and that s. 26 is additional. The sum mentioned in the latter section is recoverable as a civil debt under the Summary Jurisdiction Act, 1879, s. 35 (*R.* v. *Lord Mayor of London: Ex parte Boaler* [1893] 2 Q.B. 146).

Accordingly a successful defendant who obtains an order for costs from the justices is in a more powerful position for recovery thereof than his counterpart in civil proceedings, especially where the amount is small and the parties impecunious.

Conversely, it often occurs that a comparatively poor prosecutor, who would otherwise suffer by paying the costs of the proceedings, is enabled to recover costs from a defendant, who, in all likelihood, has injured him both criminally and tortiously, but whose character and standing would render civil proceedings too expensive and unprofitable a course.

The power to award costs against a defendant is, of course, usually exercised, but the converse course is comparatively seldom adopted, in view of the exceptional circumstances which must exist before the court will make an order.

The underlying consideration appears to be that a prosecutor, be he a police officer or a private individual, is performing a duty towards the State in assisting in the suppression of offences, and the fact that his evidence is insufficient, or that some point of law defeats him, should not be allowed to penalise him for an honest attempt to fulfil that duty.

Only where the proceedings have been instituted from some improper motive, or the evidence is palpably insufficient, or if the conduct of the prosecution has been markedly irregular, will the court mark its disapproval by an adverse order as to costs.

And, clearly, the power is one to be exercised sparingly and carefully, for an award of costs against the prosecution, in cases where the police or Crown are prosecutors, usually excites a great deal of public attention. Such incidents tend to undermine the confidence of the public that the authorities cannot lightly and without proper evidence be prevailed upon to interfere with the liberty of the subject, and are strenuously to be avoided.

Company Law and Practice.

CXXXVI.

SURPLUS ASSETS IN WINDING-UP.—II.

From *Re Fraser & Chalmers Limited* [1919] 2 Ch. 114, to which I was referring at the close of this column last week, we can pass to the case of *Anglo-French Music Co. Limited* v. *Nicoll* [1921] 1 Ch. 386, a decision of Eve, J. The memorandum of association provided for ordinary and cumulative preference shares, entitled to participate in the profits of the company in certain events which are not material for our present purpose: it provided that these preference shares should be entitled, in addition, "to the repayment of capital before any

dividend is paid or capital is repaid to the holders of the said ordinary shares." This case came before the court in a way different from that in which the majority of such cases come forward, in that an originating summons for determining the true construction of the memorandum and articles was taken out, the company being still a going concern. The questions then, so far as they raised points in connexion with the rights to share in surplus assets (there were other points which arose for decision) were to some extent academic, though no doubt they had a practical bearing. Anyway, EVE, J., decided that there was nothing in the bargain contained in the memorandum to preclude the preference shareholder, in the event of the company being wound up and of there being surplus assets after repayment of all the paid-up capital, from participating with the ordinary shareholder in the distribution of such surplus.

The reasoning of the learned judge may, I think, be summed up in one sentence from his judgment, at p. 391, where he says: "In the present case the respective rights of the two classes to the profits of the company are expressly dealt with—so also are the rights in the event of an insufficiency of assets to repay all the capital in a winding up—but I cannot see anything which deals, either expressly or by necessary implication with the rights of either class in the event of the assets being more than sufficient to repay the capital." His lordship expressed his preference for the reasoning by which the decisions in the *Espuela Case* and *Re Fraser and Chalmers* were supported, as against such of the observations made in the *National Telephone Co.'s Case* as went to criticise the decision in the *Espuela Case*.

We can next go to *Collaroy Co. Ltd.* v. *Giffard* [1928] Ch. 144, in which ASTBURY, J., to some extent went back upon his earlier decision, and in which he examines the whole subject exhaustively in a very full judgment. The articles of the Collaroy Company said that the preference shares should confer "the right" to a fixed cumulative preferential dividend and "the right" in a winding up to repayment of capital in priority to the ordinary shares. Again, in this case, an originating summons for construction was taken out: the company was in process of realising its assets, which, though the purchase price was not then immediately payable *in toto*, would ultimately realise more than the whole of the paid-up capital, so that it became necessary to determine the rights. In passing, one may perhaps observe that the boldness of this step is only now apparent, as the assets consisted of land in New South Wales, and the purchase moneys were almost invariably payable by instalments over a considerable period. One can only hope that the shareholders, having paid to have their rights determined, have still got a surplus which can be distributed in accordance with the decision of ASTBURY, J.

It is by no means easy to follow the *ratio decidendi* in *Collaroy Co.* v. *Giffard*, but it would almost appear to be this—that the use of the definite article before the word "right" had the effect of exhaustively defining the rights of the preference shareholders—at any rate, ASTBURY, J., held that the preference shareholders were not entitled to share in the surplus—"on the true construction of the present contract," says the learned judge, at p. 163, "there is one statement as to the rights of the preference shareholders in dividend and capital, which statement ought to be regarded as a statement of their whole right and not merely as a statement of their priority right."

At p. 160, the learned judge expressly approves a passage from the judgment of Sargant, J., in the *National Telephone Case* that the express gift or attachment of preferential rights to preference shares, on their creation, is, *primâ facie*, a definition of the whole of their rights in that respect, and negatives any further or other right to which, but for the specified rights, they would have been entitled. This is a passage from which, in *Re Fraser & Chalmers*, he differed—and which, it seems fair to say, is at variance with the views of SWINFEN EADY, J., and EVE, J. It is perhaps unfortunate that there was no appeal in this case—the making of law for other persons may be an expensive form of activity, but it would have made things much easier for those who came after. As things stand at present, an application to the court seems inevitable when similar circumstances arise—as witness the case of *Re John Dry Steam Tugs, Ltd.* [1932] 1 Ch. 594. The really unfortunate thing seems to be that there is absolutely no finality in the matter—even after this last decision, who would be so bold as to ignore *Collaroy Co.* v. *Giffard?*

In *John Dry Steam Tugs, Ltd.*, the articles conferred upon the preference shareholders (1) a fixed cumulative dividend at the rate of 5 per cent. on their paid-up capital, with a further right to participate in certain events, and (2) priority in the event of a winding up both as to the cumulative dividend and return of capital. The company was in course of being wound up, and all its debts and liabilities had been paid or provided for, and the amount of capital paid up had been returned, but a surplus of approximately £10,000 was still available for distribution. It was obvious that only one course was possible; for the liquidator to take out a summons to have it decided how he was to distribute the surplus; any other course, would, in the circumstances, have been too dangerous. It was argued on behalf of the preference shareholders that the *Espuela Case* and *Re Fraser & Chalmers* were rightly decided, and that *Collaroy Co.* v. *Giffard* should not be followed—the ordinary shareholders arguing, of course, that it should be followed.

EVE, J., is careful to point out that the question is purely one of construction, and comes down to this, as to whether the article giving the rights contains an exhaustive definition of the rights of the preference shareholders, or only expresses certain rights which they enjoy over and above their rights as contributories. His lordship then puts forward succinctly the features of that case which have been put forward in other cases as arguments against the claim of the preference shareholders to share in surplus assets: they are (1) the participating rights, and (2) the right of priority in the repayment of capital. But, as the learned judge points out, there is authority (which has been referred to in this and the previous article on this topic) to say that neither of these features is sufficient to exclude the ordinary rights of the preference shareholders as contributories to share in the surplus assets of the company. Accordingly, in the absence of any indication in the contract (that is, of course, the contract embodied in the articles) that the preference shareholders were abandoning any of their rights as contributories, the surplus assets were distributable amongst all the shareholders.

So ends, for the present, the lamentable history of the rights of contributories in the surplus assets, lamentable in that a state of confusion and uncertainty still exists, and must continue to exist, until there is a decision of the Court of Appeal, or until the current sets in so strongly one way or the other that it cannot any longer be possible to battle against it, as it is at present.

(To be continued.)

A Conveyancer's Diary.

Maintenance of Infants—Trustees' Discretion.

A point has been put to me in reference to the position of trustees who have to consider what they should do where a father has settled a considerable part of his fortune upon his children with the object of avoiding sur-tax and calls upon the trustees to pay the income to him for the maintenance of the infants under s. 31 of the T.A., 1925.

In such circumstances trustees are placed in rather a difficult position, and I think that (contrary to what is, I believe, often done) the trustees ought not to pay the whole income to the father without the direction of the court.

In short, I think that the trustees should take into consideration the ability of the father to pay, and where he has put it out of his ability to pay, the trustees should, in every case, seek the protection of the court.

It is true that the provisions of s. 31 of the T.A., 1925, give a very wide discretion to trustees holding property in trust for an infant. Sub-section (1) (i) enacts that "the trustees may, at their sole discretion, pay to his parent or guardian, if any, or otherwise apply for or towards his maintenance, education or benefit the whole or such part, if any, of the income of that property as may in all the circumstances be reasonable, whether there is or is not (*a*) any other fund applicable to the same purpose, or (*b*) any person bound by law to provide for his maintenance or education."

There is, however, a proviso which reads:—

> "Provided that in deciding whether the whole or any part of the income of the property is during a minority to be paid or applied for the purposes aforesaid, the trustees shall have regard to the age of the infant and his requirements and generally to the circumstances of the case, and in particular to what other income, if any, is applicable for the same purposes; and where the trustees have notice that the income of more than one fund is applicable for those purposes, then, so far as practicable, unless the entire income of the funds is paid or applied as aforesaid or the court otherwise direct, a proportionate part only of the income of each fund shall be so paid or applied."

I doubt very much whether this proviso is intended to refer to the ability of the father to bear the burden of the maintenance and education of his children out of his own resources. The expression "what other income, if any, is applicable for the same purposes" appears to mean "other income" of the infant. Probably, however, "generally to the circumstances of the case" covers everything conceivable, and so the trustees are not given much guidance by it. In fact, I should think that any layman reading that proviso would say—"what in the world does it mean except that I have a discretion or what in legal parlance or rather jargon is called a sole discretion? And what is the use of giving me a 'sole' discretion and then hedging me round with a proviso which, so far as I can see, means nothing at all except that having a 'sole discretion' I must exercise it with discretion, which to me seems to be nonsense?"

I should be hard put to it to answer that except by saying that the proviso is intended as a warning to trustees not to think that they may just pay over the whole income to the parent or guardian without making any inquiry into "the circumstances of the case," and that, I am afraid, in fact, even with such a warning before them, trustees are apt to do.

It seems to me, however, that especially in cases where the father has himself settled the property apparently with the object of avoiding the burden of taxation (which, of course, he is entitled to do if he can) trustees should be advised to be wary and not as a matter of course to pay the income to him, and should at least be satisfied that the father has not the means to provide for the maintenance and education without recourse to the income of the settled funds.

It is a somewhat curious fact that the court will, in deciding what trustees should allow for maintenance out of an infant's income, take into consideration the ability of the father to pay, but will not inquire as to the ability of a widowed mother or of a mother who has re-married, or of her husband. It is difficult to see upon what principle this practice is based. A widowed mother is just as much legally liable to maintain her children as their father was, and so is a stepfather so long as the mother is alive.

It is true that the authorities show that the court will not interfere with the discretion of trustees, but it is also true that in effect it often does so, and unless the income available is small and "the circumstances of the case" so obvious as to admit of no doubt it is always prudent for trustees to refrain from exercising the "sole discretion" which the Legislature has conferred upon them and to apply to the court for directions.

I have another point with regard to infants which a learned friend brought to me.

Effect of Mortgage to an Infant.

A father invested a sum of money on mortgage of land and this was made in favour of his daughter, who was an infant, only a few years old. For some years the mortgagor paid the interest to the father, being apparently ignorant during that time of the fact that the mortgagee was an infant. Then the mortgagor fell into arrear, and on learning that the mortgagee was an infant took the objection that there was no one to give him a receipt, and declined to pay anything more. He even seems to have assumed the position that he was a badly injured man because he could not redeem.

The question, of course, is what can be done?

It is enacted by s. 19 (6) of the L.P.A., 1925, that—

> "A grant or transfer of a legal mortgage of land to an infant shall operate only as an agreement for valuable consideration to execute a proper conveyance when the infant attains full age and in the meantime to hold any beneficial interest in the mortgage debt in trust for the persons for whose benefit the conveyance was intended to be made."

I suppose that the only course to take is to apply to the court to remove the mortgagor as a trustee and appoint others in his place who could enforce the security. But it is a strange position.

Landlord and Tenant Notebook.

Anticipatory Breach.

The position of a party to a lease who has good grounds for believing that the other party is about to commit a breach of its terms is not altogether a happy one. The remedies which suggest themselves are an action for damages based on repudiation, and an injunction *quia timet*.

The only recorded attempt to apply the principles of repudiation to a lease appears to be that made in *Johnstone* v. *Milling* (1886), 10 Q.B.D. 460, C.A. Though the attempt was perhaps clumsily made, the judgments aptly illustrate the difficulty of treating this kind of contract as repudiated.

The facts were that the plaintiff, against whom damages were claimed in a counter-claim, had let the premises to the defendant for a term of twenty-one years, covenanting to rebuild after four years. The lease also gave the tenant the right to determine, by six months' notice, at four years. During the first three and a half years the plaintiff frequently complained of poverty and said he would not be able to find the money for rebuilding. The defendant exercised his option, stayed on a few months after the notice had expired, and on being sued for certain breaches committed by him brought this counter-claim. The county court judge found that the plaintiff had surrendered (*sic*) the term in consequence of the plaintiff's statements, but ruled that this gave him no right to damages. The Divisional Court reversed this ruling and the plaintiff then appealed to the Court of Appeal.

Lord Esher, M.R., summarised the essentials of a right to damages for repudiation as a total refusal by the defendant adopted by the plaintiff, who must unequivocally elect to treat the refusal as putting an end to the contract; and while he did not agree that what the landlord had said actually amounted to the required refusal, he also considered that even if he did there could be no election possible in this case: for a refusal to perform one obligation did not entitle the tenant to throw up the lease. And Bowen, L.J., intimated that in his view a lease could not be terminated in respect of

a breach of covenant unless the term depended on the observance of the covenant.

This makes it difficult to imagine a case in which a tenant could sue in respect of anticipated breach, the main obligation on any landlord being, of course, to permit the tenant to occupy. In the case of an agreement for a lease containing a warranty it might be different. One can conceive of a case of a house let furnished; before the term commences, the intending tenant inspects the premises and finds them verminous; the landlord does not agree that they are verminous, and says he will do nothing about it. In such a case, as the tenant would have a right to repudiate the tenancy as soon as it started and to bring an action for damages (*Collins* v. *Hopkins* [1923] 2 K.B. 617), he ought to be able to satisfy the requirements of a right to sue in respect of anticipatory breach.

Landlords may feel the need of such a remedy on such occasions as when the tenant announces that he will shortly be emigrating, has no intention of paying the rent or performing the other obligations of the lease, but will surrender it for a consideration. Under such circumstances damages might be recovered on these lines provided action could be taken quickly enough.

The remedy of injunction *quia timet* may be a useful one at times, but again the requisites are very stringent. Apart from the usual conditions precedent to the issue of an injunction—the inadequacy of damages, and the like—the plaintiff must satisfy the court that what is being done will and must result in a breach if continued. In *Doherty* v. *Allman* (1878), 3 A.C. 709, the tenants of property which included buildings had started to convert them from store buildings into dwelling-houses; the lease was for 999 years, contained a covenant to repair and uphold the buildings and *improvements*, but had no proviso for re-entry on its breach. The application for an injunction was founded on the covenant and on the obligation not to commit waste, but it was held that if there were a breach of covenant it was a positive covenant and damages would be a sufficient remedy; and waste which was ameliorating would not be restrained. A different objection prevailed in *Phipps* v. *Jackson* (1887), 56 L.J. Ch. 550, when the lessor complained that the tenant, who was under covenant to maintain a proper farming stock, had advertised a sale; for granting the injunction would have virtually meant making an order the performance of which the court could not supervise. And an injunction was refused to a shooting tenant in *Pattison* v. *Gilford* (1874), L.R. 18 Eq. 259, when the anticipated breach was the sale of the land for building purposes; for though a road was being made and plots advertised, there was no evidence that immediate possession was to be given.

A good example of a case in which a *quia timet* injunction will issue was afforded by *McEachern* v. *Colton* [1902] A.C. 104, when the Judicial Committee of the Privy Council dismissed a South Australian appeal in the following circumstances: the tenant, contrary to his covenant against alienation, had executed an assignment, but the alienee's title was not complete without registration, and the injunction had been granted to restrain registration, without which the alienee's title was not complete.

A TITHE REMISSION BILL.

A Bill to provide for the remission of tithe rent-charge has been drawn up by the Council of the National Tithepayers Association in the hope that it will be presented in the House of Commons. The principal clause is as follows: "Where in proceedings for the recovery of tithe rent-charge it is shown to the court that the total annual amount payable in pursuance of the Tithe Acts exceeds 3s. in the pound of the annual value of the land charged therewith, the court shall not order the recovery of any greater sum than would be due if the total annual amount so payable were equal to 3s. in the pound of the annual value of such land, and the excess shall be remitted."

Our County Court Letter.

COMMERCIAL TRAVELLERS AND WORKMEN'S COMPENSATION.

The privileged position of commercial travellers was recently illustrated at Bristol County Court in *Dunning* v. *Binding*, in which the applicant claimed compensation in respect of the death of her husband. The deceased had been doing business at 10 a.m. near Stapleton-road Station, where his body was found on the line at 5.20 p.m., the evidence being that the night (of the 18th December) was dark and rainy, that the deceased had worn glasses for fifteen years, and that extensive alterations were being made at the station. The respondent called no evidence, but submitted that there was no case to answer, as (1) the deceased had no business at the spot in question, and (having finished his day's work) he was going home; (2) he had paid for his own season ticket; (3) the accident did not arise out of and in the course of the deceased's employment, as he was doing nothing for the respondent at the time. His Honour Judge Parsons, K.C., observed that a question arose as to whether it was an accident or suicide, but the evidence was against the latter, as the deceased apparently went to the platform thinking that the fast train (by which he was evidently killed) was his own. The ambit of the employment extended, not from the time of arrival at and departure from the place of work, but from the time of leaving home (for the purpose of travelling for the employer) until the time of return. The deceased was therefore still in the course of his employment when at the station, and an award was made of £300 and costs, subject to a stay of execution for twenty-one days. The leading case on this subject is *Dickinson* v. *Barmak Limited* (1908), 124 L.T. News 403, which was discussed in a County Court Letter under the above title in our issue of the 24th January, 1931 (75 Sol. J. 54.)

GARAGES IN RESIDENTIAL DISTRICTS.

An instance of a widespread modern problem recently occurred at Exeter County Court in *Goldspink* v. *Bowyer and Stile*, in which the claim was for an injunction against the first defendant (as owner of a garage) and for damages for breach of covenant against the second defendant, as vendor of a site on a building estate. The second defendant, having bought the estate in 1906, had sold it in plots, subject to restrictive covenants against user for business purposes. No objection had been taken to the erection of a garage in 1930, as the plaintiff did not anticipate any business user, but the garage was sold in November, 1931, to the first defendant, who used the premises as a repair depot. Seven adjoining householders gave evidence of noise (causing a nuisance and depreciation of their properties), but the first defendant denied these allegations, and pointed out that he only used light machinery of a silent type, as his premises were merely a repair depot. The second defendant pointed out that (1) prior to buying the garage in November, the first defendant had held it on lease, and had been notified (in October) that the lease would be terminated if a nuisance were caused; (2) the second defendant had disposed of his interest in the property to a third party in February, 1932, and was not in possession of the property at the time of the alleged nuisance. Having reserved judgment, His Honour Judge the Hon. W. B. Lindley held that the allegation of nuisance had not been substantiated, and the claim for an injunction failed as regards the use of the garage for business purposes. Judgment was given for the plaintiff, however, for 40s. nominal damages as regards the past obstruction or interference with the plaintiff's right of way on the path and roadway, and an injunction against future obstruction was also granted, without costs. Judgment was further given in favour of the second defendant, with costs on Scale C.

In Lighter Vein.

THE WEEK'S ANNIVERSARY.

On the 6th July, 1856, died George Bankes, the last cursitor baron of the Exchequer. Thereupon, the office was abolished by statute, for though the duties attached to it had once been numerous and important, by the time Mr. Bankes was appointed in 1824, none remained except that of examining the accounts of the sheriffs. Even this was taken out of the hands of the cursitor baron by the Fines Act, 1833, and thereafter his sole remaining task was to draw a salary of about £400 a year. Mr. Bankes had not been a great success at the Bar, but besides this appointment, he managed to possess himself of quite a creditable array of political offices—Chief Secretary of the Board of Control, Junior Lord of the Treasury, Commissioner for the Affairs of India and Judge Advocate-General. It should be explained that the functions of a cursitor baron of the Exchequer had always been purely ministerial and that he exercised no judicial authority in connexion with the court.

QUALIFIED SIMPLICITY.

"I suppose I am easy to take in," said His Honour Judge Cluer, at Shoreditch County Court, recently, "but I like to know when it is done." No genuine *bonâ fide* simpleton could afford to make such a remark and litigants would do well to note that it is not always the quickest judge who wears the most ostentatiously sagacious look. Lord Justice Mathew, for example, might easily have been taken for a simple and benevolent country squire, rather than the shrewdest judge of his time, and once his unsophisticated appearance led a vendor of painted sparrows to accost him in the street and ask his opinion as to their species. The judge carefully examined the artificial yellow of the would-be canaries and remarked that he had never seen anything like them before, but that if it were true that birds of a feather flock together, they were probably gaol-birds. The vendor saw his error of judgment and took himself off. It should be added that this story is also told of another legal wit, Judge Adams of Limerick County Court.

FORCE MAJEURE.

The definitely cinematographic conclusion of a recent case in which a notable Chicago gunman was charged with a bank robbery suggests (if correctly reported) that justice there is to some extent in a state of siege. At the trial, the jury disagreed in the face of definite identification by two officials, and shortly afterwards the Assistant States Attorney applied for the charge to be dismissed on the ground that since the hearing, the witnesses had had to live in hiding in an hotel under an armed guard. When the judge suggested that they were big enough to look after themselves, the reply was "not when faced with a machine-gun," and the charge was dismissed accordingly. It is some centuries since that style of argument impressed an English court, but intimidation, in less ambitious forms, is never altogether impossible. Once when Serjeant Ballantine found himself prosecuting a prisoner defended by a wild Irishman, he had not seen before, he had occasion to object to a question put to a witness. "You object do you sor?" said his opponent. "I was tould when I came here that what I said was sure to be objected to; but I am not to be put down, sor, and will prove to my lord judge that it is as genteel a question as ever was put by a counsellor to a deponent and that in spite of your objection." Meanwhile, Ballantine had inquired of someone who the fellow was and was told that his name was O'Flaherty "a regular fire-eater who had killed one man and winged two or three others." Immediately he rose and said "My lord, I withdraw my objection."

Mr. Robert Arthur Kendrick, solicitor, of Finchley, N., left £20,373, with net personalty £7,606.

Reviews.

International Adjudications Ancient and Modern History and Documents, together with Mediatorial Reports, Advisory Opinions and the Decisions of Domestic Commissions on International Claims. By JOHN BASSETT MOORE. Modern Series, Vol. IV. 1931. Royal 8vo. pp. xxvi and (with Index) 600. London and New York: Humphrey Milford, Oxford University Press. 15s. 6d. net.

The editor—one of the greatest living authorities on International Law—published in 1898 his well-known "History and Digest of International Arbitrations." The object of the present publication is "to furnish an intelligible and fully documented report of all judicial decisions of international questions not recorded in the ordinary law reports" (General Introduction to Vol. I, published in 1929). Vol. IV deals with the work of the Anglo-American Mixed Commission constituted under the provisions of the Treaty of 1794. International arbitrations become more important every year, and this publication, admirable in every respect, will become a part of the "law reports" of the arbitration tribunals.

Settlement and Removal. By E. J. LIDBETTER, of the Public Assistance Department, London County Council. 1932. Crown 8vo. pp. xii and (with Index) 164. London: Law & Local Government Publications Limited. 3s. 6d. net.

This is a textbook for students desirous of obtaining a certificate of the Poor Law Examination Board, and deals with its subject in a perfectly simple manner. As the author points out the days of the gladiatorial contests of settlement officers are ended, and in a text-book on settlement and removal it is no longer necessary to produce a highly technical treatise such as was common a generation ago. The little book before us bears evidence of careful preparation and should prove very useful to the students for whom it has been written.

Traders' Accounts and Income Tax. By B. DAVIES and H. P. GREGORY, with a foreword by C. GORDON JOLIFFE, F.C.A., of the Institute of Chartered Accountants. London: Sweet & Maxwell Limited. 15s. net.

This work is written primarily for the accountant whose practice consists mainly in preparing the accounts of traders for income tax purposes. It deals exclusively with that topic, and in particular the authors have made an effort to deal with the importance of statements necessary in what are called "back duty" investigations and the practice usually adopted in arriving at settlements. The volume is not intended for the legal profession, but it contains references to a large number of important cases and the practising solicitor who has to deal with income tax matters will probably find very useful suggestions in it.

Books Received.

The Bombay Law Journal. Vol. X. No. 1. June. Bombay: The Union Press. Rs.2 per copy. Annual subscription: Rs.10 for India; Rs.13 Foreign.

New York University Law Quarterly Review. Vol. IX. No. 4. June. Vermont: New York University Law Quarterly Review. $1 per copy. Subscription: $3 per annum.

Minnesota Law Review. Vol. 16. No. 7. June. Minneapolis: Law School for the University of Minnesota. 60 cents per copy. Subscription: $3 per annum.

Tulane Law Review. Vol. VI. No. 4. June. New Orleans: Tulane University College of Law. $1 per copy. Subscription: $4 per annum.

[All books acknowledged or reviewed can be obtained through The Solicitors' Law Stationery Society, Limited, London and Liverpool.]

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Interchange by Agreement of Legacies and Realty given by Will—Stamp Duty.

Q. 2509. A by his will bequeathed certain legacies to B, and left his real estate to C and others. The parties have agreed that B will take the real estate in substitution for the legacies which legacies shall then take the place of the realty to be divided between C and others. Is there any method of avoiding ad valorem stamp duty on the conveyance of the properties by the trustees of the will to A?

A. We do not think so. The transaction is in effect a purchase by B with his legacies of the freeholds. Even on the supposition that the statutory power of appropriation is applicable and could be employed, and this seems doubtful as it would appear that the real estate is specifically devised (A.E.A., 1925, s. 41 (1), proviso (i)), we understand that the Revenue claims ad valorem duty even if assurance by way of assent is made use of. Whether this claim is justified is a matter of some difference of opinion. For diverse views see "Everyday Points in Practice," Pt. VIII, s. 13, case 8; "Alpe" ("Law of Stamp Duties"), 21st ed., p. 134.

Undivided Shares—Adjustment on Termination of a Partnership.

Q. 2510. Commencing in 1920, A and B purchased several properties, always providing the purchase moneys in equal shares, but in some cases the conveyance was to A and in others to B, there being no written record whatever of the other partner's interest. In 1925 they executed a declaration of trust to the effect that A held the properties in his name in trust for himself and B equally, and that B held the properties in his name in trust for himself and A equally. A has recently died and his executors have contracted to sell his half share in all the partnership properties. Your advice is sought upon the best method of carrying the transaction into effect and vesting the properties in the proper persons, i.e., B and the purchaser, as partners in equal shares. It is also desired to save as much stamp duty as possible. One method that occurs to us is to leave the properties standing in B's name and for A's executors to convey to the purchaser or to the purchaser and B upon the statutory trusts; then for B and the purchaser to execute a declaration of trust of the properties remaining in B's name and the properties transferred into the name of the purchaser or the names of B and the purchaser, for themselves as partners in equal shares. The original declaration of trust would, of course, be formally cancelled by B and the executors of A.

A. Immediately before the coming into force of the L.P.A., 1925, the properties were held by A and B in equity in undivided shares, vested in possession. On the 1st January, 1926, therefore, A held those conveyed to him on the statutory trusts, and B held the rest on the like trusts (L.P.A., 1925. Sched. I, Pt. IV, para. 1 (1)). Now that A is dead the legal estates vested in him are in his executors (A.E.A., 1925, s. 3 (1) (ii)), and they can exercise the trusts reposed in him (T.A., 1925, s. 18), or appoint new trustees (*ibid.*, s. 36). We suggest that A's executors should assign to the purchaser the equitable interests late of A in all the properties, and appoint B and the purchaser trustees of the statutory trusts and properties of which A was trustee, and that B should appoint the purchaser a trustee to act with him in respect of the trusts and properties of which he is the trustee. This would involve ad valorem stamp duty on the value of the equitable interests late of A (one-half of the value of the properties) and two 10s. deed stamps in respect of the appointments. We do not think that there is any method of avoiding the ad valorem duty on the value of the interests sold. With regard to the suggested declaration of trust we do not think that it would escape with a mere deed stamp.

Title to "Burial Money" paid by a Benefit or Trade Union Society as between the Member and the Personal Representatives of the Deceased.

Q. 2511. Mr. and Mrs. F were working-class people living together. Mrs. F died on the 27th December, 1931, and her own net personal estate amounted to £4,412 7s. 4d. Mr. F (a carpenter by trade) died on the 19th January, 1932, and his net personal estate amounted to £2,029 14s. 11d. Mrs. F, by her will, directed her executors to pay her debts and funeral and testamentary expenses. Mr. F was a member of a benefit society and also a trade union society. On the death of Mrs. F £10 was paid by the benefit society for her "burial money" and £6 was paid by the trade union society for a similar purpose. Mrs. F's funeral expenses amounted to £27 11s. 6d. which were paid by her executor. The executor of Mrs. F claims that the two amounts received from the societies belong to her estate in part payment of her funeral expenses, whereas the executors of Mr. F claim the payments as part of his estate by virtue of his membership of the societies. Will you be so good as to inform us whether the executor of Mrs. F is entitled to the said sums as part of her estate, or whether the £16 should be paid to the executors of Mr. F.

A. We reply to this query on the assumption that there is nothing in the rules of the societies bearing on the point. In our opinion the payments are part of the estate of the deceased member Mr. F. The fact that the moneys were called "burial" moneys merely indicates the use to which they would normally be put by an indigent member, and in no way imposes any trust upon the member to use them for that purpose. Apart from the express directions of the will of Mrs. F it was the duty of her executor to bury her in a manner suitable to the estate which she left, and he has neither need nor right to call upon the husband, or rather his estate, to meet any part of the expense.

Infant's Marriage—Consent—Refusal—Application to Court—Health of Proposed Spouse as a Factor Affecting Exercise of Discretion.

Q. 2512. A, a young man of twenty-three, desires to marry a girl of the age of nineteen. Having regard to the age of the girl and also her parents not being willing to give their consent, it will in all probability be necessary for A to make application to the court for the court's approval. The point upon which your opinion is desired, is does the health of the male materially affect the application. My client, who is the man in question, has had a slight illness some time ago which left an indelible mark on him, but apart from this, he can obtain a medical certificate saying that he is quite healthy.

A. As we understand the law "the Court" in s. 9 (1), proviso (*b*), has full discretion. The health of the proposed spouse could properly be considered. How far the court would be affected by this consideration in any particular case is impossible to prophesy.

Notes of Cases.

High Court—Chancery Division

In re **Davies: Lloyds Bank** *v.* **Mostyn.**

Clauson, J. 15th June.

WILL—BEQUEST TO CHARITY—GIFT TO ARCHBISHOP—"FOR WORK CONNECTED WITH ROMAN CATHOLIC CHURCH"—INVALIDITY OF GIFT.

By her will dated 28th August, 1928, Miss Jane Margaret Maude Davies, of Llantrisant, Glamorgan, bequeathed her residuary estate "upon trust to pay the income thereof to the Archbishop for the time being of the Archdiocese of Cardiff for work connected with the Roman Catholic Church in the said Archdiocese." The testatrix died on 6th February, 1931, and this summons was taken out to have it determined whether the bequest was a valid charitable gift, or whether the provision in the will was bad. The summons was taken out by Lloyds Bank, Limited, as executor and trustee under the will, and the defendants to the summons were the Roman Catholic Archbishop of Cardiff, a first cousin of the testator, representing the next-of-kin, and the Attorney-General.

CLAUSON, J., in delivering judgment, said that unless the bequest was charitable, there was a difficulty in supporting it, since it infringed the rule against perpetuities, and was too vague. The expression "work" in connexion with the Roman Catholic Church must include much that was not in the strict sense of the word charitable. For instance, the carrying on of a social club the qualification for membership of which was adherence to the Roman Catholic faith could not be said to be a charitable purpose, though it was work connected with the Roman Catholic Church. He was bound to hold that if on the true construction of the will it would be open to the Archbishop without committing a breach of trust to use the income of the fund for non-charitable purposes, then the provision in the will would be bad. It was suggested that the absence of words giving the Archbishop a discretion to select objects should make some difference, but he did not see how that could be so. The actual objects were obviously within the control of the Archbishop and he, his lordship, could not see that it made any difference whether that was expressed in words or was the necessary result of the framing of the will. The principle on which he proceeded was established, and he could not hold that the gift was effective.

COUNSEL: *H. O. Danckwerts; Sir G. Hurst*, K.C., and *F. McMullan; F. Morton*, K.C., and *R. F. Roxburgh; Stafford Crossman.*

SOLICITORS: *Cameron, Kemm & Co.; Peacock & Goddard*, for *L. G. Williams & Prichard*, Cardiff; *Helder, Roberts & Co.; Treasury Solicitor.*

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

In re **de Carteret: Forster** *v.* **de Carteret.**

Maugham, J. 22nd and 23rd June.

WILL—CHARITABLE TRUST—43 ELIZ. C. 4—"POOR PEOPLE"—AMBIT—LIMITED MEANS.

The Right Reverend Frederick de Carteret, formerly Bishop of Jamaica, died on the 3rd January, 1932. By his will he bequeathed £7,000 to trustees to invest it and use the income "in providing annual allowances of £40 each to widows or spinsters in England whose income otherwise shall not be less than £80 or more than £120 per annum . . . The selection of the beneficiaries shall be in the discretion of the trustees, but preference shall be given to widows with young children dependent on them."

MAUGHAM, J., in giving judgment, said that the first of the objects given in the preamble of the statute, 43 Eliz. c. 4, was the "relief of aged, impotent and poor people." In the case of *In re Gardom; Le Page* v. *Attorney-General* [1914], 1 Ch. 662, Eve, J., gave his view that the expression "poor people" need not be confined to the destitute poor and might include people who, considering their circumstances and the class from which they came, could be regarded as within the meaning of the words. This was also the view of Romer, J., in *In re Clarke; Bracey* v. *Royal National Lifeboat Institution* [1923], 2 Ch. 407. When a question arose as to the ambit of this preamble and the limit to be placed on charities for the relief of poverty it was correct to hold that a trust for relieving persons of limited means whose circumstances made it desirable that a contribution should be made to their performance of their duties as citizens was a good charitable trust. His lordship would have hesitated to hold this gift charitable had it been solely for the benefit of widows and spinsters, and not, in effect, confined to widows with young children dependent on them.

COUNSEL: *Roxburgh; Buckley; Stafford Crossman* (for the Attorney-General).

SOLICITORS: *Gray & Dodsworth; Treasury Solicitor.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Betts *v.* **Receiver for the Metropolitan Police District and Another.**

Du Parcq, J. 6th June.

POLICE—CONFISCATED PROPERTY—BELIEVED STOLEN—WRONGFULLY HANDED TO CLAIMANT—CLAIM BY TRUE OWNER—POLICE ACTION PROTECTED—PUBLIC AUTHORITIES PROTECTION ACT, 1893, 56 & 57 VICT., C. 61, S. 1.

In this action Joseph Betts, a general dealer, claimed against the Receiver for the Metropolitan Police District and Carter Paterson & Co., Ltd., general carriers, damages for alleged detinue, conversion, and the return of fifteen rolls of cloth, or their value, and damages for their alleged detention. On the 17th February, 1925, the plaintiff was found guilty at the London Sessions of having received a quantity of jewellery, knowing it to have been stolen, and he was sentenced to five years' penal servitude. When the jewellery was found the police also took possession of the fifteen rolls of cloth which were in the plaintiff's house. At the trial the plaintiff was also indicted for stealing and receiving the cloth, but no evidence was given in support of that second charge, and the indictment relating to the cloth was left on the record where it still remained. The plaintiff's case in the present action was that the cloth had been in his possession since 1918, he having taken it as security for a loan of £250 made to a man named Freedman, who subsequently gave him permission to sell it. The defence was that the cloth in question was stolen from the warehouse of Carter Paterson & Co., Ltd., between August, 1919, and March, 1920, and that it was the property of that company, to whom it was returned by the police. The Receiver for the Metropolitan Police District pleaded that the action was out of time, and that in any case he was entitled to the protection afforded by the Public Authorities Protection Act, 1893. The jury, after hearing the evidence, found for the plaintiff and awarded him £150 damages, but judgment was postponed pending argument on the statutory defence raised under the Act of 1893.

DU PARCQ, J., said that the Receiver for the Metropolitan Police District relied on the provisions of the Public Authorities Protection Act, 1893, a plea not open to his co-defendants. It was ultimately agreed that the only question was whether the police acted in "intended execution" of a "public duty" within the meaning of s. 1 of that Act. He was satisfied in the present case that the police officials concerned not only had no belief in the validity of the plaintiff's claim to the cloth, but did not believe in 1925 that he intended to make a claim to it. He (his lordship) must deal with the case, however, on the footing that, in the view of the police, Carter Paterson & Co. had a good claim, and no one else was making a real claim. On that view of the facts he agreed that the duty

of the police was to deliver the cloth at once to its true owner, and in his view that duty was a "public duty" and within the protection of the Act. On the point whether the action was out of time, he (his lordship) was of the opinion that the present case was within the general rule referred to in *Williamson* v. *Verity*, L.R. 6 C.P. 209. There would be judgment for the plaintiff against Carter Paterson & Co., Ltd., for £150, with costs, and for the Receiver for the Metropolitan Police District against the plaintiff, with costs, except as to the last day of the hearing.

COUNSEL: *Geoffrey Howard*, for the plaintiff; *Tristram Beresford*, for the Receiver for the Metropolitan Police District; *W. N. Stable*, for Carter Paterson & Co., Ltd.

SOLICITORS: *F. W. Perkins; Wontner & Sons; Theodore Goddard & Co.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

TABLE OF CASES previously reported in current volume—Part I.

Obituary.

MR. W. T. LAWRANCE, K.C.

Mr. William Thomas Lawrance, K.C., Recorder of Bournemouth since 1928, died at his home at Wimbledon on Thursday, the 23rd June, at the age of seventy-five. He was called to the Bar by the Middle Temple in 1895, and joined the Western Circuit. He took silk in 1920, and was elected a Bencher of his Inn in 1928. He was Private Secretary to Baron Henry de Worms, M.P. (afterwards Lord Pirbright), when Parliamentary Secretary to the Board of Trade in 1885, and when his chief was appointed Under-Secretary of State at the Colonial Office in 1888, he continued his services. In 1924 he was appointed Recorder of Poole, and in 1928 was transferred to Bournemouth in succession to Mr. W. J. H. Brodrick.

MR. F. G. RUCKER.

Mr. Frederick George Rucker, barrister-at-law, died at Blackheath on Thursday, the 16th June, at the age of seventy-six. Educated at Uppingham and Brasenose College, Oxford, he was called to the Bar by the Middle Temple in 1879, and joined the Midland Circuit. He afterwards devoted himself to law reporting, and was for many years on the staff of *The Times* in that capacity. He retired in 1915.

MR. H. S. K. FELTHAM.

Mr. Harold Stanley Kirkham Feltham, solicitor, Town Clerk of Crewe since 1909, died at Chester Royal Infirmary on Thursday, the 23rd June. He was admitted a solicitor in 1897. His eldest son, Mr. F. B. Feltham, is Town Clerk of Hereford.

MR. H. BENTWICH.

Mr. Herbert Bentwich, who belonged to an English family of Sephardic Jews, died on Saturday, the 25th June, at his home in Jerusalem, aged seventy-six years. Educated at University College, London, he qualified as a solicitor and practised till 1901. He was called to the Bar by the Inner Temple in 1902, and was editor of the *Law Journal* from 1907 to 1924. In 1925 he settled in Jerusalem, and became an examiner in law for the Palestine Law School.

MR. F. A. STIRK.

Mr. Frank Aubrey Stirk, LL.B., solicitor, a partner in the firm of Messrs. Stirk & Co., of Wolverhampton, died on Tuesday, the 14th June, at the age of fifty-eight. He was admitted a solicitor in 1897, and for some years he was an assistant solicitor in the Inland Revenue (Excise Department), Somerset House. He was deputy coroner of Wolverhampton for eleven years.

MR. S. H. STOCKWOOD.

Mr. S. H. Stockwood, solicitor and magistrate's clerk, a partner in the firm of Messrs. Stockwood & Williams, solicitors, of Bridgend, died recently at the age of seventy-five. Mr. Stockwood, who was admitted a solicitor in 1883, held a considerable number of public appointments, including that of coroner's clerk for Ogmore Manor. He was chairman of directors of *The Glamorgan Gazette*.

The Law Society.

ANNUAL REPORT.

The annual report of the Council of The Law Society to be presented to the general meeting of the members on 8th July, announces the vacancies on the Council, particulars of which together with the nominations were given in last week's issue of THE SOLICITORS' JOURNAL.

After recording several ministerial appointments, appointments of the Society's representatives on Public Bodies, and appointments under the Solicitors Acts, 1888 and 1919, the report goes on to deal with various matters, some of the more important of which are as follows:—

MEMBERSHIP OF THE SOCIETY.

The Society has now 10,336 members, of whom 4,256 practise in town and 6,080 in the country; 387 members joined the Society during the past year as compared with 337 in the previous year. After allowing for deaths, resignations, and exclusions, the number of members shows an increase for the year of fifty-three. The present membership is once again the highest in the Society's history, being approximately two-thirds of the total number of practising solicitors. The Council venture to urge all members to do what they can towards persuading non-members to join the Society. By this means it will be assisting in its work of protecting and advancing the interests of the profession.

LEGAL EDUCATION.

The number of articled clerk students attending law schools (excluding the Universities of Oxford, Cambridge, and London) in the autumn term, 1931, was 1,069, an increase of thirty-two compared with the corresponding figures for the previous autumn term.

THE CHARTER OF THE SOCIETY.

On the 22nd December, 1931, the Society attained the hundredth anniversary of its first Royal Charter of Incorporation, which was granted by King William the Fourth by Letters Patent under the Great Seal, bearing date at Westminster the 22nd day of December, 1831.

PROVINCIAL MEETING, 1932.

On the invitation of the Bristol Incorporated Law Society, the Provincial Meeting, which will take place on the 4th and 5th October next, will be held at Bristol.

SOLICITORS' BILLS.

In December last Sir John Withers prepared and submitted to the Council a new Bill providing that the Council, with the concurrence of the Master of the Rolls, should make rules for the professional practice, conduct and discipline of solicitors which (*inter alia*) should include provision as to the opening and keeping by solicitors of accounts at banks into which they should pay all money received or held by them for or on account of clients and that such rules should include also provision as to the keeping by solicitors of accounts containing particulars and information as to moneys received, held or paid by them for or on account of clients and the nature and extent of the particulars and information which would have to be included in such accounts.

The Bill then provided that such rules might provide that any neglect or failure to comply with them should be deemed professional misconduct.

Clause 2 of the Bill placed as a condition upon the issue to a solicitor of his annual practising certificate that he should either lodge a statutory declaration that he had complied with the rules or produce a certificate by a qualified accountant to the same effect, or obtain from the Council an order dispensing with the necessity of such a declaration or certificate. The clause included a right of appeal to the Master of the Rolls.

The third clause of the Bill contained a power to the Discipline Committee, in addition to their authority to strike a solicitor off the Rolls or suspend him from practice, to impose upon him a fine not exceeding £100.

The Council considered the Bill and decided it should be submitted to the Provincial Law Societies for their approval and subsequently that it should be submitted to the special general meeting of the Society to the intent that the Council might be authorised to inform Sir John Withers that if he introduced the Bill it would not be opposed by the Council.

The Bill was submitted to the Provincial Law Societies, but their reply was not received in time to submit it to the special general meeting of the Society, which was held on the 29th January, 1932. At that meeting, therefore, the President was able only to inform the meeting of the contents of the Bill and of the fact that it had been submitted to the Provincial Law Societies and that it would not be desirable to discuss it until their views had been ascertained.

In due course many and varied opinions were received from the Provincial Law Societies individually upon the Bill. It was considered also at a meeting of the Associated Provincial Law Societies held in London on the 12th February, 1932, when the following resolution was passed:—

"That this meeting is of the opinion that the Council of The Law Society with the approval of the Provincial Law Societies should have power to make rules on the lines contemplated by the Bill and also rules providing conditions as to the issue and renewal of solicitors' practising certificates, but disapproves the provisions of clause 2 of the Bill and that the meeting would approve legislation on the foregoing lines.

"That the title of the Bill be amended to read as follows:—

"'A Bill to amend the Solicitors Acts, 1839 to 1928, by enabling and requiring The Law Society to make and enforce rules of professional conduct and authorising the imposition of fines for professional misconduct.'"

This resolution was considered subsequently by the Council, who informed Sir John Withers that, having considered certain amendments which he had made in the Bill, the Council regarded them as being undoubtedly improvements in the Bill, but that they must not be taken as expressing any approval of it. Subsequently a resolution was passed by the Council and reported to Sir John Withers that the Council would not oppose the second reading of the Bill, but might desire to move amendments in committee. Sir John Withers has rejoined that he was only prepared to modify his original suggestions for the purpose of securing an agreed measure, and as this agreed measure cannot be obtained, he proposes to have nothing further to do with the suggested new Bill. He states that in due course he will submit to the House of Commons his Bill, as originally submitted, which contained provisions for the keeping by every solicitor of a clients' account at a bank, with certain provisions for its protection and as to a compulsory audit.

SOLICITORS' ACTS (CONSOLIDATION) BILL.

It was stated in the annual report for 1930 that the Council had considered and submitted their observations upon a draft Bill to consolidate the Solicitors Acts.

The Bill has been completed and has been introduced into the House of Lords by the Lord Chancellor. It reproduces without amendment the whole of the statute law in force in England with respect to solicitors, except so far as that law is contained in enactments which it is undesirable to separate from their present context or which for other reasons it is undesirable to reproduce in the Bill. Practically twenty Acts of Parliament are consolidated in the Bill.

SUPREME COURT RULES.

CHANGE OF SOLICITOR.

In the last annual report it was stated that the Council had approved draft rules which had been prepared by the Lord Chancellor's Department with the object of amending the procedure on change of solicitors and were intended to be in substitution for Ord. 7, r. 3, of the Supreme Court Rules.

Rule 3 has now been revoked and new rules have been made which came into operation on the 1st April, 1932, and were published in the Society's *Gazette* for March, 1932, at p. 109.

COSTS OF LITIGATION.

This subject has been under frequent consideration by the Council. In the last annual report it was mentioned that the Society had been in communication with the Lord Chancellor and had submitted to His Lordship a memorandum which was printed in the appendix to last year's report.

Subsequently the London Chamber of Commerce submitted a supplementary memorandum by way of reply to the observations of the General Council of the Bar and The Law Society. These documents have been under the consideration of the Lord Chancellor and as a result rules have been adopted and issued by the Rule Committee of the Supreme Court. The chief feature is the institution of a new form of summons for directions which can be issued and made returnable after pleadings are closed, on the return of which it is contemplated that the judge will be able to give directions with regard to methods of trial and evidence, written and verbal, which should result in a reduction in the number of witnesses to be called and the amount of correspondence to be copied, thus shortening the length of trials and the cost of those actions to which the rules apply.

PHOTOSTAT COPIES OF WILLS.

The Council were informed that delay in the issue of the probate of a will had occurred in the following circumstances: The original will had been engrossed on brief paper and the codicils on foolscap paper. The solicitor had included with

his papers an engrossed copy of the will but had not included engrossed copies of the codicils. In this he had acted in accordance with the regulations which, although they stated that a will engrossed on brief paper must be accompanied by a copy on foolscap for photostat purposes, did not state that in such a case there must be provided also engrossed copies on foolscap of the codicils.

The Council indicated to the Senior Probate Registrar their opinion that the regulations should be amended so as to indicate clearly the necessity of providing copies in all cases in which such copies are required.

As a result of these representations, the Principal Probate Registry subsequently issued new and more complete instructions.

Income Tax Act, 1918, Section 103.

It was stated in the last annual report that the Council had had under consideration the question of the liability of solicitors to make returns under s. 103 of the Income Tax Act, 1918, in respect of income which has passed through their hands on behalf of clients and has not been taxed at the source. During the year under review further letters have been received from members inquiring whether the Council propose to intervene, and replies have been made that it is not their intention or desire to advise solicitors to resist compliance with any legal obligation, but that in this particular case it is essential, as the client is involved, that there should be no doubt of the extent of the obligation.

Finance Act, 1931.

It is provided by s. 14 (9) of the Finance Act, 1931, that the Reference Committee for England constituted by s. 33 of the Finance (1909-10) Act, 1910, shall in relation to the powers and duties of the Reference Committee under Pt. III of the Finance Act of 1931 consist of the persons mentioned in that section (33), together with the President of The Law Society. The powers and duties referred to are set out in s. 14 (6) of the Finance Act, 1931, and consist mainly in making rules as to the time within which and the manner in which appeals are to be made from the Commissioners of Inland Revenue as to land or cultivation values and as to the manner in which the referee to whom any such appeal is to be made is to be selected.

Clerks to Justices.

Several Provincial Law Societies recently have passed resolutions deprecating what they term the growing practice of appointing laymen to the office of magistrates' clerk, as being prejudicial to the interests of justice and persons on trial.

Since the passing of the Justices Clerks Act, 1877, qualification for appointment as a salaried clerk of a Petty Sessional Division, or as a clerk to the justices of a borough, has been regulated by s. 7 of that Act, which provides that every such clerk shall be either a barrister or a solicitor or a person who has served for not less than seven years as a clerk to a police or stipendiary magistrate. The section then proceeds as follows:—

> "Provided that a person who for not less than fourteen years has served as or as assistant to either a clerk of a petty sessional division or a clerk to the justices of a borough, may be appointed salaried clerk in any case in which, in the opinion of the justices empowered to make the appointment, there are special circumstances rendering such appointment desirable."

When the Justices Clerks Act, 1877, was passing through the legislature, efforts were made on behalf of the Council to secure the omission from the Bill of the facilities extended by it to non-qualified assistant clerks, which efforts, however, were unsuccessful.

Section 34 of the Criminal Justice Administration Act, 1914, provided that clerks to justices should continue to be appointed as theretofore, but no appointment made after the commencement of that Act should be valid unless and until it was confirmed by the Secretary of State who, before confirming any such appointment, was to take into consideration any representations made to him in the case of the appointment of a clerk to borough justices by the Council of the borough, and in the case of the appointment of a clerk to the county justices, by the Standing Joint Committee of the county.

On receipt of the resolutions which, as already mentioned, have recently been passed by some of the Provincial Law Societies, the Council, after inquiring into the history of the matter, sought an interview with Sir Ernley Blackwell at the Home Office. They ascertained that the Home Office, before confirming any appointment, are not content merely to wait for any representations which, without request, may happen to be made to them regarding any contemplated appointment, but that in every case a letter is addressed either to the council of the borough or the clerk to the standing joint committee, as the case may be, definitely requesting their views as to the propriety of any contemplated appointment.

It is true that in the absence of any objection by any local council or committee the Home Secretary would find it difficult to object to any appointment except on financial grounds. The Council, however, are assured that he would consider most carefully any objections which might be raised by any such local council or committee.

It must be a matter for Provincial Law Societies to keep themselves fully informed as to the likelihood of a vacancy, so that in good time they may make such representations to their local borough council or standing joint committee as will secure the appointment of an efficient successor to the vacancy.

The duties and responsibility of a justices' clerk are far greater now than they were in 1877 or even in 1914, and they are constantly growing; the justices, who are usually laymen, necessarily rely upon their clerk to advise them upon questions of law and on such matters as the admission of evidence, which are constantly arising. In these circumstances, the Council are of opinion that in all future appointments the clerk to justices should be either a barrister or solicitor, and that the proviso to s. 7 of the Act of 1877, which is quoted above, should accordingly be repealed.

The Council are considering what steps can be taken usefully towards giving effect to their opinion.

Application of Bankruptcy Law to all Married Women.

At the Provincial Meeting held at Folkestone in October last, it was resolved that, in the opinion of that meeting, it was desirable that the bankruptcy laws should be made applicable to all married women, and the Council were requested to take the subject into their consideration.

The resolution was considered by the Council and referred to the Parliamentary Committee, who in turn sought the views respectively of the Lord Chancellor's Department and the Board of Trade. The latter replied informally that it would be impossible for the Board of Trade to give any pledge as to the line it would adopt if a Private Bill were introduced for the purpose of applying the bankruptcy laws to all married women; the question was only part of a much larger question, viz. the financial status of married women under modern conditions. The question was controversial and could only be dealt with after a full enquiry by a Commission or a Committee.

Valuation of Reversions for Death Duty Purposes.

A member of the Society informed the Council that it had been his ordinary practice in rendering death duty accounts to return the value of reversionary interests in accordance with the table to the Succession Duty Act, 1853, but that in a recent case he had consulted an actuary who had pointed out to him that an actuarial valuation of the reversion would have been considerably less than the amount fixed by the Succession Duty Act table.

As it seemed to the Council from inquiries which they made on the subject that a certain amount of misapprehension exists as to the proper method of arriving at the valuation of reversions for death duty purposes, they inserted in The Law Society's *Gazette* for August, 1931, an explanatory paragraph on the subject.

Solicitors' Clerks' Pension Fund.

This fund, of which The Law Society is the trustee, was inaugurated in May, 1930, and has presented its second annual report and statement of accounts, for the year ended 31st December, 1931.

At the date of the report the membership of the fund was 385 clerks, being an increase of 173 during the year. The number of firms contributing was 116, and the distribution of firms and clerks as between London and the provinces was as follows, namely: 34 London firms and 193 of their clerks, and 82 provincial firms and 192 of their clerks.

The contributions and lump sums received during the year 1931 amounted to £9,084, and the cost price of investments with accrued interest and cash with bankers amounted to £15,398 10s. 5d.

The fund is now well established and the benefits offered by the fund only need to be appreciated in order that the fund should receive the general support of the whole profession. The committee of management of the fund state in their report that they feel strongly that the principle of making provision for the old age of clerks who have given their best to their firms ought to be admitted in every office, and that if it is not possible to enter all the clerks as members, a commencement should be made with some of the younger men.

Poor Persons Procedure.

The report for the year 1931 of the work done by the committees appointed by The Law Society and the Provincial

Law Societies under the Poor Persons Procedure Rules is included in the appendix to the report. It is a remarkable record of valuable services rendered by solicitors all over England and Wales to people who otherwise would have been too poor to assert their legal rights. The majority of applications have been in respect of matrimonial suits, but there are indications that the procedure is being invoked increasingly for actions of other kinds. The report shows a slight increase in the number of applications in London and in the provinces. It is evident, however, notwithstanding this fact, that the committees are well abreast of their work and that the cases have been conducted and disposed of expeditiously. It is apparent also that applications are receiving adequate scrutiny and that in the very few cases in which the procedure has been abused due punishment has been meted out to the offenders.

NOTARIAL ARTICLES.

The attention of the Council was directed to the fact that while under various statutory provisions the usual term of five years' articles for qualification as a solicitor is reduced in some cases to four and in others to three years, the law with regard to notaries public provides for a five years' term of service in every case. Thus it comes about that the two sets of articles cannot run entirely concurrently.

The Council invited the observations of the Society of Provincial Notaries Public in the matter and they in turn sought the views of the Master of Faculties. He has replied that in view of the fact that legislation would be necessary to give effect to the proposal, the advantages gained would hardly repay the cost entailed.

PROCEEDINGS UNDER THE SOLICITORS' ACTS.

As indicating the magnitude of the work undertaken by the Professional Purposes Committee it is convenient to mention here that that committee dealt, during the period under review, with upwards of 1,300 applications affecting the practice and etiquette of the profession.

Societies.

The Medico-Legal Society.

"SHOULD THE CRIMINOLOGIST BE ENCOURAGED?"

Lord Riddell (the President) took the chair at a meeting of this Society, held on 23rd June, and Mr. Alexander Paterson, one of H.M. Commissioners of Prisons, read a paper with this title.

Mr. Paterson held that the criminologist had a most useful position in society if he turned his abilities along certain lines. First of all, he should seek out the causes of crime, and it was very doubtful whether they lay in any inherited characteristics. Although there certainly existed a "prison type," there was no "criminal type." Environment, also, was an uncertain factor: many criminals came from squalid dwellings, but so did many honest men. The criminologist must pierce behind the psychologist's explanation of a mysterious temperamental factor and make research among mental and physical defectives and the inhabitants of "criminal" quarters and villages. He could only approach the truth by patiently accumulating facts about criminals. Secondly, he should search for means of preventing crime rather than devise weapons with which to fight the accomplished criminal. He should study the police detective methods of all countries and appreciate the help offered by science. Thirdly, he must acquaint himself with the field of penal law, which in this country was scattered and archaic. The English penal law urgently needed consolidation and co-ordination, and there was no one to undertake the task. Fourthly, he should strive to bridge the gulf between the court that sentenced the offender and the administration that carried out the sentence. Few magistrates and judges, perhaps, knew that hard labour and penal servitude were practically identical with ordinary imprisonment. The Borstal system, he said, was advertised almost entirely by its minority of failures, hardly at all by its preponderant successes; its methods and results badly needed interpreting to the bench and to the public.

Finally, the criminologist should study penology and the progress which various nations had made from mere detention to punishment, and from punishment to training, and the different emphasis they laid on different aspects of punishment. He should learn the science of prison administration and the art of handling individual offenders, and study the successes and shortcomings of other countries. Prison administration in England endeavoured to find the middle course between oppressing the prisoner and pampering him, but would be greatly assisted by an independent expert who had time and leisure to study its problems and correlate them with others.

A CHAIR OF CRIMINOLOGY.

The public and the press were profoundly interested in crime, but that interest was of little value without a constructive policy. Mr. Paterson suggested that the real study of crime would be best encouraged if some public benefactor would found a chair of criminology at Oxford University. The professor would be a master of criminal law and a student of psychology and sociology, with a shrewd knowledge of humanity and a humorous tolerance towards cranks and fanatics; for choice he should be a lawyer. His students would come, among others, from those who were reading for law honours or greats. His vacations might be spent in the lodging-houses of London, casual wards, courts of justice and prisons, where he would undertake research and collate information: he would occasionally perpetrate a letter to *The Times*, write articles to international reviews, and represent the country at international conferences. It remained to find a lawyer of many parts. Mr. Paterson concluded by apologising for propounding, not a problem, but a professor!

Sir Walter Greaves-Lord, K.C., in the ensuing discussion, pointed out that the English criminal law covered practically every form of crime, gave a very wide discretion in its definition and administration, and could be adapted very easily as the manners of the community changed and advanced. One of its strengths was that it was administered by men who, though keenly devoted to their duty, were not specialists in any sense of the word, but men imbued with ideas of justice, trained in the wide school of general law, and in touch with the life of the community in most of its aspects. He trembled to think of the consequences if it were tampered with by an enthusiastic specialist.

Haldane Club.

COURTS OF DOMESTIC RELATIONS.

At a meeting of the Haldane Club held on 20th June, Mr. R. S. W. Pollard addressed the club in favour of the establishment of special Courts of Domestic Relations. He began by pointing out the multitude of courts at present dealing with matrimonial disputes involving different considerations, different kinds of orders, or different money values, and again the number of different courts concerned with the guardianship or adoption of children. He also quoted as an example of the present miscarriage of justice in this type of case the high percentage of men imprisoned for non-payment of maintenance under separation orders. He asserted that the present law completely fails to meet family problems, but the discussion was confined to the mode of administration of the law and did not include the law itself. Mr. Pollard's ideas for these special courts were partly based on reports of American Courts of Domestic Relations. His requirements were judges with special qualifications and plenty of time, and as part of the court personnel psychological experts, doctors and social workers available to give advice to parties who sought it voluntarily, and also to make investigations in disputed cases. He acknowledged his indebtedness to Miss C. Morrison as one with whose known views on this subject he was in sympathy.

Parliamentary News.

Progress of Bills.

House of Lords.

Bills of Exchange Act (1882) Amendment Bill.
Read Second Time. [28th June.

Birkenhead Corporation Bill.
Reported, with Amendments. [28th June.

Chester Corporation Bill.
Read Third Time. [28th June.

Children and Young Persons Bill.
Read Third Time. [28th June.

Extradition Bill.
Read Second Time. [27th June.

Gateshead Extension Bill.
Read Third Time. [28th June.

Hire Purchase and Small Debt (Scotland) Bill.
Read Second Time. [27th June.

London United Tramways Limited (Trolley Vehicles) Provisional Order Bill.
Read Third Time. [23rd June.

Malta Constitution Bill.
Amendments reported. [28th June.

Mid Southern Utility Bill.
Read Third Time. [27th June.

Ministry of Health Provisional Order (Leyton) Bill.
Read Third Time. [23rd June.
Ministry of Health Provisional Order (Oxford) Bill.
Read Third Time. [23rd June.
Ministry of Health Provisional Order (Paignton) Bill.
Read Third Time. [23rd June.
Ministry of Health Provisional Order (River Dee) Bill.
Read Third Time. [23rd June.
Ministry of Health Provisional Orders (Abergavenny and Newcastle-upon-Tyne) Bill.
Read Third Time. [23rd June.
Ministry of Health Provisional Orders (Bridlington and Wells) Bill.
Read Third Time. [23rd June.
Nottingham Corporation Bill.
Read Third Time. [29th June.
South Lancashire Transport Company (Trolley Vehicles) Provisional Order Bill.
Read Third Time. [23rd June.
South Suburban Gas Bill.
Read Third Time. [28th June.
Southern Railway Bill.
Read Third Time. [27th June.
Town and Country Planning Bill.
In Committee. [28th June.
Trent Navigation Bill.
Read Third Time. [27th June.
Wokingham District Water Bill.
Read Second Time. [23rd June.

House of Commons.

Agricultural Credits (Mortgages) Bill.
Read Second Time. [24th June.
British Museum Bill.
Read Second Time. [24th June.
Bury Corporation Bill.
Lords Amendments agreed to. [24th June.
Carriage by Air Bill.
Read Second Time. [24th June.
Gas Undertakings Bill.
Reported, with Amendments. [28th June.
Grangemouth and Stirling Water Order Confirmation Bill.
Read Third Time. [27th June.
Hove Pier Bill.
Read Third Time. [27th June.
Imported Foodstuffs (Marking) Bill.
Read First Time. [28th June.
Isle of Man (Customs) (No. 2) Bill.
Read Second Time. [29th June.
Kilmarnock Gas Provisional Order (No. 2) Bill.
Read First Time. [23rd June.
London and North Eastern Railway Order Confirmation Bill.
Read Third Time. [23rd June.
London County Council (General Powers) Bill.
Lords Amendments agreed to. [27th June.
Marriage (Naval, Military, and Air Force Chapels) Bill.
Read Third Time. [24th June.
Metropolitan Water Board Bill.
Reported, with Amendments. [23rd June.
Ministry of Health Provisional Order Confirmation (Hailsham Water) Bill.
Read Second Time. [29th June.
Ministry of Health Provisional Order Confirmation (Henley-on-Thames Water) Bill.
Read Second Time. [29th June.
Ministry of Health Provisional Order Confirmation (Hertford) Bill.
Read Second Time. [29th June.
Ministry of Health Provisional Orders Confirmation (Elham Valley Water and Herts and Essex Water) Bill.
Read Second Time. [29th June.
Patents and Designs Bill.
Read Third Time. [24th June.
Public Works Loans Bill.
Read Second Time. [24th June.
Solicitors Bill.
Read Second Time. [24th June.
South Metropolitan Gas Bill.
Reported, with Amendments. [23rd June.
Sunday Entertainments Bill.
Read Third Time. [29th June.
Warrington Extension Bill.
Reported, with Amendments. [23rd June.
Weston-super-Mare Grand Pier Bill.
Reported, with Amendments. [23rd June.
Wolverhampton Corporation Bill.
Reported, with Amendments. [24th June.

Legal Notes and News.

Honours and Appointments.

The King has been pleased to approve a recommendation of the Home Secretary that Mr. JOHN WYLIE be appointed Recorder of Smethwick to succeed Mr. D. COTES PREEDY, K.C., who has been appointed Recorder of Oxford. Mr. Wylie, who was called to the Bar by the Inner Temple in July, 1908, practises in London and in Birmingham.

Mr. ERNEST PAKENHAM-WALSH, I.C.S., has been appointed a Puisne Judge of the High Court at Madras in the vacancy which will occur on 4th July on the retirement of Mr. Justice Waller.

Mr. SYDNEY J. THORNE, Solicitor, of Southall, Middlesex, has been appointed Assistant Solicitor to the Middlesbrough Corporation in succession to Mr. A. S. Ruddock, who has been appointed Assistant Solicitor to the County Council of Somerset.

Professional Announcements.

(2s. per line.)

THE SOLICITORS' MORTGAGE SOCIETY, LTD. (formed by Solicitors for Solicitors), invites particulars of FUNDS or SECURITIES. Apply, The Secretary, 20, Buckingham-street, Strand, W.C.2. Telephone No. Temple Bar 1777.

Wills and Bequests.

Mr. Norman Robinson, retired solicitor, of Keswick, who died on 25th January, left estate of the gross value of £9,194, with net personalty £7,812. He left £50 to Dora Alice Yeoward, for some years in the service of his late mother.

Mr. Walter Henrichsen Guthrie, F.S.A., solicitor, of Upper Berkeley-street, who died on 19th May, left £7,731, with net personalty £6,450. He left £100 to his former confidential clerk and £100 to his housekeeper.

Mr. John Waterworth, solicitor, of Keighley, Yorks, left £6,355, with net personalty £2,495.

Mr. Basil Henry Wilkinson, solicitor, of Bushey Heath, Herts, left £10,547, with net personalty £6,610.

Mr. Herman Joseph Cohen, barrister-at-law, of New-court, Temple, E.C., left £1,984, with net personalty £1,803.

Mr. David Gillies, retired solicitor, of Edinburgh, left personal estate valued at £28,938.

Mr. Thomas Andrew Macfarlane, solicitor, of Ealing, left £27,541, with net personalty £27,220.

PRESENTATION TO CHAIRMAN OF FINSBURY JUSTICES.

Mr. J. E. Cecil Bigwood, chairman of justices for the Finsbury Division, was recently presented by his colleagues with an illuminated address on completion of forty years' service as a justice of the peace for the County of London. For thirteen years he has been chairman of the division.

HIS MAJESTY'S JUDGES.

An interesting little exhibition of drawings of portraits of some of His Majesty's judges, by Powys Evans, was opened by Messrs. P. and D. Colnaghi, on Tuesday last, at 144–6, New Bond-street. The drawings are quite well done, especially those of Sir Horace Avory, Sir Thomas Scrutton, Sir Henry Slesser, Sir Herbert du Parcq and Sir Henry McCardie.

Mr. J. K. F. Cleave, after being sworn in as Recorder of Tiverton, Devon, on Saturday last, said that Lady Kekewich, the widow of Sir Trehawke Kekewich, his predecessor, had presented a silk gown for the use of himself and future Recorders.

MEMORIAL TO SIR EDWARD CLARKE.

A stained-glass window to the memory of the late Sir Edward Clarke, K.C., was unveiled and dedicated at St. Peter's Church, Staines, last Sunday, by Sir Percival Clarke, Sir Edward's elder son. The window bears the inscription: "To the glory of God and in commemoration of the public services and eminent professional career of The Right Honourable Sir Edward Clarke, K.C., M.P. for the City of London and Solicitor-General, this window is placed in this, his much-loved church by friends and fellow citizens."

CALENDAR AT OLD BAILEY.

HEAVY AMOUNT OF SERIOUS CRIME.

The Recorder (Sir Ernest Wild, K.C.), in his charge to the Grand Jury at the Central Criminal Court, on Tuesday last, said that he regretted to say that the calendar contained the names of no fewer than 106 persons.

Considering the interval between the commencement of the last session and the beginning of the present session, this number was 30 per cent. higher than it ought to be. A similar condition of things obtained last session.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. 1.	MR. JUSTICE EVE.	MR. JUSTICE MAUGHAM.
	GROUP I.		Witness. Part I. GROUP II.	Non-Witness.
M'nd'y July 4	Mr. Andrews	Mr. Blaker	Mr.*More	Mr. Ritchie
Tuesday .. 5	Jones	More	*Ritchie	Andrews
Wednesday 6	Ritchie	Hicks Beach	*Andrews	More
Thursday . 7	Blaker	Andrews	*More	Ritchie
Friday 8	More	Jones	Ritchie	Andrews
Saturday .. 9	Hicks Beach	Ritchie	Andrews	More
	MR. JUSTICE BENNETT.	MR. JUSTICE CLAUSON.	MR. JUSTICE LUXMOORE.	MR. JUSTICE FARWELL.
	Witness Part II.	Non-Witness.	Witness. Part II.	Witness Part I.
M'nd'y July 4	Mr.*Andrews	Mr. Hicks Beach	Mr. Blaker	Mr.*Jones
Tuesday .. 5	More	Blaker	*Jones	*Hicks Beach
Wednesday 6	*Ritchie	Jones	Hicks Beach	*Blaker
Thursday . 7	Andrews	Hicks Beach	*Blaker	Jones
Friday 8	*More	Blaker	Jones	*Hicks Beach
Saturday .. 9	Ritchie	Jones	Hicks Beach	Blaker

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2 %. Next London Stock Exchange Settlement Thursday, 7th July, 1932.

	Middle Price 29 June 1932.	Flat Interest Yield.	Approximate Yield with redemption
		£ s. d.	£ s. d.
English Government Securities.			
Consols 4% 1957 or after	101xd	3 19 2	—
Consols 2½%	66	3 15 9	—
War Loan 5% 1929-47	101¾	4 18 3	—
War Loan 4½% 1925-45	102	4 8 3	4 5 10
Funding 4% Loan 1960-90	103¼	3 17 6	3 17 3
Victory 4% Loan (Available for Estate Duty at par) Average life 31 years	103	3 17 8	3 16 9
Conversion 5% Loan 1944-64	110	4 10 11	4 8 3
Conversion 4½% Loan 1940-44	105½	4 5 4	3 18 4
Conversion 3½% Loan 1961	93	3 15 3	—
Local Loans 3% Stock 1912 or after	77¼	3 17 8	—
Bank Stock	288	4 3 4	—
India 4½% 1950-55	94	4 15 9	—
India 3½%	72	4 17 3	—
India 3%	62	4 16 9	—
Sudan 4½% 1939-73	103	4 7 5	4 6 9
Sudan 4% 1974	101	3 19 3	3 19 1
Transvaal Government 3% 1923-53 (Guaranteed by British Government.)	96	3 2 6	3 5 4
Colonial Securities.			
Canada 3% 1938	92¼	3 4 10	4 9 0
Cape of Good Hope 4% 1916-36	99	4 0 10	4 5 0
Cape of Good Hope 3½% 1929-49	85	4 2 4	4 16 6
Ceylon 5% 1960-70	108	4 12 7	4 11 1
Commonwealth of Australia 5% 1945-75	93½	5 6 11	5 7 8
Gold Coast 4½% 1956	101	4 9 1	4 8 6
Jamaica 4½% 1941-71	101	4 9 1	4 8 11
Natal 4% 1937	99	4 0 10	4 4 6
New South Wales 4½% 1935-45	78½	5 14 8	7 1 10
New South Wales 5% 1945-65	87½	5 14 3	5 17 3
New Zealand 4½% 1945	91	4 18 11	5 10 0
New Zealand 5% 1946	97	5 3 1	5 6 4
Nigeria 5% 1950-60	108	4 12 7	4 9 8
Queensland 5% 1940-60	88½	5 13 0	5 16 10
South Africa 5% 1945-75	101½	4 18 6	4 18 4
South Australia 5% 1945-75	92½	5 8 1	5 8 11
Tasmania 5% 1945-75	92½	5 8 1	5 9 0
Victoria 5% 1945-75	87½	5 14 3	5 15 10
West Australia 5% 1945-75	94½	5 5 10	5 6 5
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corporation	72	4 3 4	—
Birmingham 5% 1946-56	107	4 13 5	4 10 2
Cardiff 5% 1945-65	104	4 16 2	4 15 1
Croydon 3% 1940-60	80	3 15 0	4 5 0
Hastings 5% 1947-67	106	4 14 4	4 13 0
Hull 3½% 1925-55	87½	4 0 0	4 7 6
Liverpool 3½% Redeemable by agreement with holders or by purchase	85	4 2 4	—
London County 2½% Consolidated Stock after 1920 at option of Corporation	63	3 19 4	—
London County 3% Consolidated Stock after 1920 at option of Corporation	75	4 0 0	—
Metropolitan Water Board 3% "A" 1963-2003	75½	3 19 6	—
Do. do. 3% "B" 1934-2003	79	3 15 11	—
Middlesex C.C. 3½% 1927-47	94	3 14 6	4 0 10
Newcastle 3½% Irredeemable	79xd	4 8 8	—
Nottingham 3% Irredeemable	72	4 3 4	—
Stockton 5% 1946-66	107	4 13 5	4 11 9
Wolverhampton 5% 1946-56	105	4 15 3	4 12 10
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	87½	4 11 6	—
Gt. Western Rly. 5% Rent Charge	101½	4 18 6	—
Gt. Western Rly. 5% Preference	51	9 16 1	—
L. Mid. & Scot. Rly. 4% Debenture	76½xd	5 4 7	—
L. Mid. & Scot. Rly. 4% Guaranteed	58½	6 16 9	—
L. Mid. & Scot. Rly. 4% Preference	26½	15 1 10	—
Southern Rly. 4% Debenture	78½xd	5 1 11	—
Southern Rly. 5% Guaranteed	86½	5 15 7	—
Southern Rly. 5% Preference	40½	12 6 10	—
*L. & N.E. Rly. 4% Debenture	69½xd	5 15 1	—
*L. & N.E. Rly. 4% 1st Guaranteed	47	8 10 2	—
*L. & N.E. Rly. 4% 1st Preference	20	20 0 0	—

*The Prior Charge Stocks of the L. & N.E. Rly. are no longer available for Trustees under the heading of either Strict Trustee or Chancery Stocks as no dividend has been paid on that Company's Ordinary Stocks for the past year.